

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	
)	
PATRICIA HILLIARD,)	Civil No. 3:14-cv-00408
WALLACE HILLIARD,)	
BANK of AMERICA N.A.,)	
HILLIARD LIMITED PARTNERSHIP,)	
DANIEL HILLIARD and ANDREW HILLIARD)	
AS TRUSTEES OF THE)	
WALLACE J. HILLIARD FINT TRUST, and)	
GREEN BAY AIR, INC.,)	
)	
Defendants.)	

UNITED STATES OF AMERICA'S COMPLAINT

Plaintiff, the United States of America, for its Complaint, which is commenced pursuant to I.R.C. §§ 7401 and 7403, at the direction of the Attorney General of the United States, and with the authorization and at the request of Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, alleges as follows:

1. This is an action by the United States to reduce to judgment the outstanding tax assessments against Wallace Hilliard and Patricia Hilliard and to foreclose the federal tax liens upon certain real and personal property. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402 and 7403. Venue is proper in this Court under 28 U.S.C. § 1391(a) and (b).
2. Defendant, Wallace Hilliard, is a resident of Oneida, Wisconsin, and may be served there.
3. Defendant, Patricia Hilliard, is a resident of Eagle River, Wisconsin, and may be served there.

4. Defendant, Bank of America, N.A., may have an interest in property located at 9029 Herdner Rd., Eagle River, Wisconsin, and may be served through its registered agent.

5. Hilliard Limited Partnership, is an entity that Wallace Hilliard is a partner of, or has an interest in, and may be served through its general partner, Neil Maccoux.

6. Green Bay Air, Inc., may have an interest in the property located at 9029 Herdner Rd., Eagle River, Wisconsin, and may be served through Wallace Hilliard.

7. Wallace J. Hilliard Flint Trust is holding property on behalf of Wallace Hilliard and may be served through its trustees, Daniel Hilliard and Andrew Hilliard.

FEDERAL INCOME TAX LIABILITIES

8. On April 25, 2005, a delegate of the Secretary of the Treasury made additional assessments against, and gave notice and demand for payment thereof to, Wallace Hilliard for the 1996 and 1997 federal income taxes due, including any applicable penalties and interest.

9. Prior to the assessments, on November 23, 2004, Wallace Hilliard consented to the additional assessments and collection for the 1996 and 1997 tax liabilities.

10. Yet, Wallace Hilliard failed to pay over the 1996 and 1997 federal income taxes referenced in paragraph 8.

11. To date, Wallace Hilliard has neglected, failed and refused to pay the full amount of the 1996 and 1997 federal income taxes assessments. As of June 30, 2012, Wallace Hilliard owes tax, penalties, and interest of \$2,170,281.41 and \$673,962.54 for the 1996 and 1997 tax years, respectively.

12. Wallace Hilliard and Patricia Hilliard filed joint 2007 and 2008 federal income tax returns showing balances due on each return.

13. Wallace Hilliard and Patricia Hilliard failed to pay over the 2007 and 2008 federal income taxes referenced in paragraph 12.

14. To date, Wallace Hilliard and Patricia Hilliard have neglected, failed, and refused to pay the full amount of the 2007 and 2008 federal income taxes assessments. As of June 30, 2012, Wallace Hilliard and Patricia Hilliard jointly and severally owed tax, penalties, and interest of \$5,582.15 and \$3,294.03 for the 2007 and 2008 tax years, respectively.

FEDERAL TAX LIENS

15. On June 16, 2008, a Notice of Federal Tax Lien for Wallace Hilliard's 1996 and 1997 federal income tax liabilities was filed in Oneida County, Wisconsin, property records.

16. On November 30, 2011, a nominee Notice of Federal Tax lien was filed in the Oneida County, Wisconsin, property records against Green Bay Air, Inc., as nominee, alter ego, transferee, agent, and/or holder of a beneficial interest of Wallace Hilliard for his 1996 and 1997 federal income tax liabilities.

17. On March 5, 2012, a Notice of Federal Tax Lien for the Hilliards' joint 2007 federal income tax liability was filed in Oneida County, Wisconsin, property records.

18. On April 30, 2012, a Notice of Federal Tax Lien for the Hilliards' joint 2008 federal income tax liability was filed in Oneida County, Wisconsin, property records.

19. If a person refuses or fails to pay an owed tax after notice and demand, 26 U.S.C. § 6321 creates a federal tax lien that attaches to all of that person's property and rights to property owned on the assessment date or acquired thereafter. Thus, the federal tax liens against Wallace Hilliard and the Hilliards jointly attached to any and all interests they have in real and personal property.

REAL PROPERTY

20. On June 15, 2000, Wallace Hilliard, Patricia Hilliard, Daniel Hilliard, and Andrew Hilliard purchased the property located at 9029 Herdner Rd., Eagle River, Oneida County, Wisconsin, (Eagle River Property), as tenants in common each with a $\frac{1}{4}$ interest. The Eagle River Property is more fully described as follows:

Government Lot 8, Section 6, Township 39 North, Range 11 East

being more particularly described as follows:

Commencing at the northeast corner of said Section 6; thence N. $85^{\circ}47'$ W., 1106.80 feet along the north line of said Section 6 to an iron pipe; thence S. $38^{\circ}16'$ W., a distance of 200 feet to an iron pipe and the place beginning. Thence N. $89^{\circ}46'$ W., 343.60 feet to an iron pipe; thence N. $70^{\circ}46'$ W., 192 feet to an iron pipe near the shore of Cranberry Lake; thence $63^{\circ}25'$ W., a distance of 75 feet; thence S. $43^{\circ}31'$ W., a distance of 225 feet to a point; thence S. $80^{\circ}01'25''$ E., a distance of 557.03 feet to an iron pipe; thence N. $38^{\circ}16'$ E., a distance of 295.0 feet to the place of beginning. Including all land lying between the meander line and water's edge. Except that part used for road purposes.

21. On March 12, 2003, Andrew Hilliard quit claim deeded his $\frac{1}{4}$ interest in the Eagle River Property to Wallace Hilliard and Patricia Hilliard.

22. On March 10, 2004, Daniel Hilliard quit claim deeded his $\frac{1}{4}$ interest in the Eagle River Property to Wallace Hilliard and Patricia Hilliard.

23. On March 10, 2004, it appears that Wallace Hilliard and Patricia Hilliard executed a mortgage against the Eagle River Property. Upon information and belief Defendant, Bank of America, N.A., may hold this mortgage.

24. On April 25, 2005, the IRS assessed and gave notice and demand to Wallace Hilliard for the 1996 and 1997 tax liabilities. Thus, the section 6321 federal tax lien attached to Wallace Hilliard's $\frac{1}{2}$ interest in the Eagle River property on the assessment date, April 25, 2005.

26 U.S.C. § 6321, *Rice Investment Co. v. United States*, 625 F.2d 565, 568 (5th Cir. 1980).

25. On August 23, 2005, Wallace Hilliard quitclaim deed his ½ interest in the Eagle River Property to Green Bay Air, Inc., (“Green Bay Air”) for no consideration. However, Wallace Hilliard’s transfer was subject to the federal tax liens because subsequent transfer of that property does not affect the lien because no matter into whose hands the property goes, the property passes with the lien attached. *United States v. Davenport*, 106 F.3d 1333, 1335 (7th Cir. 1997)(quoting *United States v. Bess*, 357 U.S. 51, 57 (1958)).

26. Upon information and belief, Green Bay Air is not a purchaser, holder of a security interest, mechanic’s lien, or judgment lien creditor in regards to the Eagle River Property in accordance with I.R.C. § 6323(a). Green Bay Air is not a bona fide purchaser of the Eagle River Property as set forth in I.R.C. § 6323(h)(6). I.R.C. §6323(h)(6) defines a purchaser as a “person who, for adequate and full consideration in money or money’s worth, acquires an interest in property which is valid under local law against subsequent purchasers without actual notice.” Since the Eagle River Property was transferred to Green Bay Air for no consideration, the transfer was made subject the United States’ federal tax liens.

27. Green Bay Air is a nominee/alter ego of Wallace Hilliard merely holding title to the Eagle River Property for the real owner, Wallace Hilliard. Federal tax liens also attach to property held by the taxpayer's nominees—someone who has legal title when, in substance, the taxpayer enjoys the benefits of ownership. *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 350–51, (1977); *United States v. Swan*, 467 F.3d 655, 658 (7th Cir.2006); *Macklin v. United States*, 300 F.3d 814, 818 n.2 (7th Cir. 2002).

28. Additionally, prior to the August 23, 2005, transfer of the Eagle River Property, Wallace Hilliard was aware of his significant outstanding federal income tax liabilities because on November 23, 2004, he consented to the 1996 and 1997 liabilities. Wallace Hilliard transferred

the Eagle River Property for no consideration. Thus, the transfer of the Eagle River Property to Green Bay Air was a fraudulent conveyance as set forth in chapter 242 of the Wisconsin Statutes. Wis.Stat. § 242.04.

OTHER PROPERTY

29. Upon information and belief Wallace Hilliard owns, has an interest, or is a partner in Hilliard Limited Partnership. Wallace Hilliard owns both limited partnership and general partner units in Hilliard Limited Partnership. Hilliard Limited Partnership owns property, undeveloped land, brokerage accounts, and other investments.

30. Upon information and belief Wallace Hilliard owns an interest in, or is a beneficiary of the Wallace Hilliard Flint Trust. The United States' federal tax liens are attached to Hilliard's interest in the Trust.

31. Upon information and belief the Wallace Hilliard Flint Trust is a self-settled trust created by Wallace Hilliard in 1998. Wallace Hilliard Flint Trust is subject to collection of Hilliard's federal income tax liabilities.

WHEREFORE the United States requests as follows:

1. That this Court determine that defendant, Wallace Hilliard, is indebted to the United States for the 1996 and 1996 tax liabilities assessed against him in the aggregate amount of \$2,844,243.95 as of June 12, 2012, plus interest and all statutory additions provided by law;
2. That this Court determine that defendants, Wallace Hilliard and Patricia Hilliard, are jointly and severally indebted to the United States for the 2007 and 2008 tax liabilities assessed against them in the aggregate amount of \$8,876.18 as of June 12, 2012, plus interest and all statutory additions provided by law;

3. That this Court determine that the United States has a valid liens on all properties, and Wallace Hilliard's interest in the Hilliard Limited Partnership a listed in above;
4. That this Court determine that the Wallace J. Hilliard Flint Trust is self settled and its trust assets can be sold and/or utilized to pay Wallace Hilliard's outstanding tax liabilities.
5. That this Court order the foreclosure of such liens and order that such properties be sold in accordance with the law and practices of this Court, and that the proceeds of such sale be distributed in accordance with the findings of the Court and the rights of the United States;
6. That this Court determine the validity of all the liens and claims of the defendants named herein and the priority of their respective liens and claims as against that of the United States and each other; and
7. That the United States be granted such other and further relief as the Court deems just and proper.

JOHN W. VAUDREUIL
United States Attorney

/s/ Herbert W. Linder
HERBERT W. LINDER
Ohio Bar No. 0065446
Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood St., Suite 400
Dallas, Texas 75201
Phone: (214) 880-9754
Fax: (214) 880-9741
herbert.w.linder@usdoj.gov
ATTORNEYS FOR UNITED STATES